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OFFICE OF PETITIONS

In re Application of :
Mittelstein et al. : DECISION REFUSING STATUS
Application No. 10/673,296 : UNDER 37 CFR 1.47(a)
Filed: September 29, 2003 :
Attorney Docket No. P03115 :

This is in response to the renewed petition under 37 CFR 1.47(a), filed August 14, 2008.

The petition is dismissed.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.** Any extensions of time will be governed by 37 CFR 1.136(a).

Petitioner asserts that the Declaration filed with the petition renders the previous petition under 37 CFR 1.47(a) moot in that the Declaration is signed by co-inventor Robert Schauer. However, this supplemental Declaration does not set forth the entire inventive entity as required by 37 CFR 1.67(a)(2). Therefore, the previous petition under 37 CFR 1.47(a) is not moot.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicant lacks items (1) and (2) set forth above.

As to item (1), as discussed in the decision mailed July 18, 2008, the showing currently fails to demonstrate, with a documented showing, that a diligent effort was made to find or locate non-signing inventor Robert Schauer or that Mr. Schauer refuses to sign, such that the declaration can be accepted under 37 CFR 1.47(a). Rather, the present petition suggests that co-inventor Schauer can be found and is willing to sign, at least as the sole inventor.

As to item (2) above, the supplemental declaration lacks compliance with 37 CFR 1.63(a)(2) in that the supplemental declaration does not list all the named inventors. Petitioner's attention is directed to MPEP Section 602, which states:

"Where joint inventors execute separate oaths or declarations, each oath or declaration should make reference to the fact that the affiant is a joint inventor together with each of the other joint inventors indicating them by name. This may be done by stating that he or she does verily believe himself or herself to be the original, first and joint inventor together with 'A' or 'A & B, etc.'"

Accordingly, a new declaration which lists all the inventors and is signed by co-inventor Robert Schauer is required to affect joinder. *See also* MPEP Sections 201.03 and 409.03(a). The Declarations filed March 24, 2004 already lists all of the inventors, are signed by four of the inventors and leave the signature block of co-inventor Robert Schauer blank.

Further correspondence with respect to this matter should be addressed as follows:


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By Internet: EFS-Web¹

Telephone inquiries should be directed to Christopher Bottorff at (571) 272-6692.


David Bucci
Petitions Examiner
Office of Petitions

¹ www.uspto.gov/ebs/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)